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Chairperson: Mr. Penke ..... (Latvia)

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The meeting was called to order at 10.05 a.m.

Agenda item 69: Promotion and protection of human rights (*continued*) (A/64/81)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/64/159, A/64/160, A/64/170, A/64/171, A/64/175, A/64/181, A/64/186, A/64/187, A/64/188, A/64/209, A/64/211, A/64/211/Corr.1, A/64/213, A/64/213/Corr.1, A/64/214, A/64/216, A/64/219, A/64/226, A/64/255, A/64/256, A/64/265, A/64/272, A/64/273, A/64/279, A/64/289, A/64/290, A/64/293, A/64/304, A/64/320 and A/64/333)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/64/224, A/64/318, A/64/319, A/64/328, A/64/334 and A/64/357)

1. **Mr. Ojea Quintana** (Special Rapporteur on the situation of human rights in Myanmar), introducing his report (A/64/318), said that national elections, the fifth step of the seven-step road map to democracy in Myanmar, were planned for 2010. However, the Government had not yet promulgated any electoral law or announced an official date for the elections, which cast some doubt on its commitment to international human rights standards and democratic values.

2. National elections should be inclusive, so all prisoners of conscience should be released and enabled to participate, either as candidates or as voters. Elections should also be fair and transparent, and the candidates should be able to campaign without harassment. They should have full liberty to exercise their rights of freedom of speech, movement and association. Voters should be allowed to exercise their freedom of expression without fear of intimidation or reprisals. All the political factions should be free to attend the counting of ballots, alongside the civil servants in charge of the counting.

3. Participation by the international community in the electoral process could only strengthen the credibility of the end result. He therefore proposed the establishment of an oversight mechanism, similar to the tripartite partnership between Myanmar, the Association of Southeast Asian Nations (ASEAN) and the United Nations which had been found so effective in responding to humanitarian needs after Cyclone Nargis. The mechanism would oversee the inclusiveness, transparency and fairness of the elections.

4. He had recommended that the Government of Myanmar should implement four core human rights elements: revision of domestic laws to ensure compliance with international human rights standards and the human rights provisions in the new Constitution; release of all prisoners of conscience; reform of the armed forces; and the independence of the judiciary. Human rights violations were widespread and systematic, resulting in serious abuses in many conflict areas, and the prevailing impunity allowed the violations to continue. He was again asking the Government of Myanmar to take urgent steps to ascertain who was responsible, to prosecute the perpetrators and to sensitize its armed forces to the provisions of international law on human rights and international humanitarian law.

5. Impunity was proof that the judiciary was not independent and that its members were not sufficiently aware of their duty. He therefore suggested that Myanmar should request technical assistance and advice on reforming its judiciary. One of the pillars of democracy being the independence of the three State organs from each other, the seven-step road map would not be completed until members of the judiciary were aware of their rights and responsibility to ensure justice, including by combating impunity through fair and transparent trials. The country's laws must be revised to bring them into conformity with international human rights law.

6. In Myanmar, a rice-exporting country, 5 million people were in need of food aid. Many people had no access to health care or proper housing and were unable to meet their essential needs unless their children worked, and as a result the children were unable to go to school. A solution must be found to that situation.

7. He mentioned the trial of Aung San Suu Kyi and pointed out that although 131 prisoners of conscience had been released in September, over 2,000 others were still in prison. The Government must refrain from imprisoning its political opponents, and must release all prisoners of conscience before the elections in 2010.

8. He welcomed the decision of the Government of Myanmar to accept a third mission to the country before the end of 2009, and reiterated his commitment to helping the country to promote human rights.

9. **Mr. Tun** (Myanmar) said that he was happy to confirm that the Myanmar authorities were expecting a third visit from the Special Rapporteur. He regretted, however, that the Special Rapporteur had not shown sufficient recognition of the spirit of cooperation shown by the Government of Myanmar, given that during his visit he had held meetings with ministers, visited prisons, travelled to the region affected by Cyclone Nargis, and in Kayin State had met national groups which had returned to the legal fold. In the report, the views of the insurgents and anti-Government groups had been given a sympathetic ear. The report contained unverified allegations and its focus was on selected individuals and groups, rather than engagement with the authorities.

10. It was also regrettable that the Special Rapporteur was expressing doubt that the elections scheduled for 2010 would actually take place, and was questioning the determination of the Government of Myanmar to hold free and fair elections, promulgate electoral laws in the near future and also establish an electoral commission.

11. In spite of the Special Rapporteur's doubts as to the independence and impartiality of the judicial system, the basic principles of the judicial process were part of the law. In his country, the courts were not dependent on either the executive or the legislature. Fundamental rights were protected by a constitutional court. The appointment of the President and members of the Supreme Court had to be authorized by the National Assembly, and the Supreme Court acted to protect human rights. In questioning the manner in which judges performed their role, the Special Rapporteur was exceeding his mandate. Cooperation must to be the basis for protecting human rights.

12. **Ms. Mirow** (Sweden), speaking on behalf of the European Union, said that a forthcoming draft resolution would reflect concern about the human rights situation in Myanmar, and would focus on human rights and the 2010 elections. She asked how the Government of Myanmar could make progress in applying the four elements defined by the Special Rapporteur before elections were held, and what assistance it could expect in that regard from United Nations agencies. She wondered how the future ASEAN Inter-Governmental Commission on Human Rights could help Myanmar to become a genuine democracy, and would like to know more about the technical assistance which the country needed, according to the Special Rapporteur, in order to improve the situation of prisoners of conscience and reform its judicial system.

13. **Mr. Vigny** (Switzerland) asked if Myanmar would demonstrate, through specific actions, its intention to cooperate and improve the humanitarian and human rights situation by following up the recommendations of the Special Rapporteur and guaranteeing him regular access to the country. He welcomed the recent release of a number of prisoners, and asked that all political prisoners should be released and that the house arrest order on Aung San Suu Kyi lifted before the 2010 elections. He called upon Myanmar to hold free and transparent elections meeting international standards, to enter into dialogue with all the political factions, and to guarantee the rights of minorities. He asked how the international community could support the Government of Myanmar in that process.

14. **Ms. Ellis** (Australia) deplored the continuing house arrest order against Aung San Suu Kyi. The 131 recently released prisoners must be enabled to play a part in politics, and all political prisoners should be set free. The continuing conflict and the recruitment of child soldiers by the various parties was to be condemned. It was regrettable that the Special Rapporteur had not been able to make a further visit to Myanmar since February, and that Myanmar had not presented any progress report. She asked what the Special Rapporteur would treat as a priority when he made his third visit in November 2009.

15. **Ms. Kopicova** (Czech Republic) said that the end of 2009 was fast approaching, and she wondered whether Myanmar would have time to promulgate electoral laws and release prisoners of conscience before the 2010 elections were held. She also wished to know what other measures had been taken by the Government of Myanmar since the most recent visit of the Special Rapporteur.

16. **Mr. Mohamed** (Maldives) supported the call for the unconditional release of Aung San Suu Kyi and recalled that his country had co-sponsored the last Human Rights Council resolution on the release of

political prisoners. He reminded Myanmar that it had given a commitment to organize free and fair elections in 2010.

17. **Ms. Freedman** (United Kingdom of Great Britain and Northern Ireland) said that her country remained deeply concerned at the systematic and widespread violations, the arbitrary arrests and the continued detention of numerous political prisoners, and in particular the house arrest of Aung San Suu Kyi. She called for all political detainees to be released and for all political and ethnic groups to be enabled to take part in the democratic process. She requested the Special Rapporteur to supply details on the conditions of detention of the political prisoners, on the inter-ethnic conflicts at the borders of the country, which had created flows of refugees, on the discrimination with regard to the Muslim population in Northern Rakhine State and on the closures of Catholic churches in Shan State. She also asked about the likely impact on human rights of the elections planned for 2010.

18. **Mr. Tun** (Myanmar), speaking on a point of order, said that his country should be called by its correct name, Myanmar, not Burma.

19. **Mr. Okuda** (Japan) welcomed the release of 131 political prisoners in September but deplored the continued house arrest of Aung San Suu Kyi. Japan urged the Government to release all political prisoners and to establish a process of democratization before the 2010 elections, pointing out that time was becoming short. It also urged Myanmar to organize inclusive, fair and transparent elections. He asked what the Special Rapporteur's priorities would be for his third visit and how the countries of Asia could assist Myanmar to become a democracy .

20. **Ms. Plaisted** (United States of America) said that she regretted that the Special Rapporteur had not been permitted to make a follow-up visit to Burma before issuing his report. She asked the Special Rapporteur whether it was time to change strategy, as his report suggested might be necessary, in the light of the lack of progress with regard to human rights on the part of the Burmese authorities. Her delegation called for the release of all prisoners of conscience, one of the four core elements that the Special Rapporteur had recommended taking into account; she asked whether the Burmese authorities had made a commitment to free any more of them. The United States was deeply troubled by the use of rape and sexual assault by the army and wished to know whether such crimes would be investigated. She fully supported the call made by the Special Rapporteur for assistance to the civilian victims of conflict, in particular the ethnic minorities who were the subject of ongoing attacks and the Muslims living in the north of the country. The international community must remain vigilant; it was important to take into account the recommendations of the Special Rapporteur in that area.

21. **The Chairperson** reminded all delegations that they should use the official designation of Myanmar.

22. **Mr. Tun** (Myanmar), speaking on a point of order, reminded the representative of the United States of Americ and at the same time all other delegations, that his country had changed its name and that it should therefore be referred to by its official designation.

23. **Ms. Melon** (Argentina) expressed the hope that the forthcoming visit of the Special Rapporteur to Myanmar would coincide with the release of other political prisoners and the reform of the justice sector. She wished to learn about the objectives and priorities of that next visit, and also how the international community could contribute to the implementation of the four core elements which the Special Rapporteur had recommended.

24. **Ms. Sunderland** (Canada), observing that the 2010 elections were drawing close, that no date had been set for them, that numerous political prisoners were still in detention, and that no laws pertaining to participation in the election had been promulgated, asked how the Special Rapporteur intended to ensure that all legitimate political actors in Myanmar would be able to participate fully in the forthcoming elections. Canada was deeply disappointed at the refusal of the Government of Myanmar to permit the Secretary-General to make a visit to Aung San Suu Kyi but did recognize that she had recently been allowed to meet Western diplomats. She asked whether that measure could be considered to be a sign of willingness on the part of the authorities of Myanmar to engage with the international community, and, if so, what next steps the Special Rapporteur would recommend.

25. With regard to the ethnic minorities, and given the intensification of military activity in ethnic areas, she asked whether the Special Rapporteur had noted an

increase in human rights abuses, in particular with regard to the use of child soldiers and forced labour.

26. **Ms. Taylor** (New Zealand) called for the immediate and unconditional release of all political prisoners. She asked the Special Rapporteur to give more detail on the situation of women and on ways to empower them, including as part of the electoral process.

27. **Mr. Ojea Quintana** (Special Rapporteur on the situation of human rights in Myanmar) was pleased that the authorities of Myanmar had communicated their willingness to continue to cooperate with him and considered it highly valuable that he was to be allowed to visit the country a third time and thus to have an opportunity to be in direct contact with the population and the victims, to assess for himself the human rights situation in the country and to establish a dialogue with the various relevant authorities. He wished to reaffirm his independence and impartiality in his capacity as Rapporteur.

28. With regard to the four core elements to be implemented before the 2010 elections, the authorities of Myanmar had confirmed that they were undertaking a review of national legislation in order to verify that it was in conformity with standards on human rights. However, until they authorized the visit of the Special Rapporteur on the independence of judges and lawyers, no evaluation of the legal system would be possible.

29. With regard to prisoners of conscience, it was important that they should all be released before the elections in 2010 so that they could participate fully therein, if they so wished.

30. As for the armed forces, training courses on human rights were planned. He recommended that, in addition, there should be a total reorganization of the armed forces to ensure that human rights were respected throughout the country, in particular in the areas of conflict.

31. With regard to the electoral process, freedom to vote was a fundamental right, but there must also be precise rules to ensure the participation of all the parties concerned. He suggested that the tripartite partnership should be re-established to observe the elections. Additionally, he called on the international community to be creative in proposing other ideas.

32. Unfortunately, he was unable to give more information on the November 2009 visit to Myanmar; the details of the visit were still under negotiation with the country's authorities.

33. The Government of Myanmar had demonstrated a degree of goodwill and the international community should seize the opportunity of the current historic moment to take action, since the question of human rights was not a matter for countries alone. He reminded the Government of Myanmar that it had a duty to respect the Charter of the United Nations and the Universal Declaration of Human Rights, two fundamental human rights instruments governing international relations.

34. **Mr. Muntarbhorn** (Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea) introducing his report (A/64/224) covering the period from late 2008 to mid-2009, said that the Democratic People's Republic of Korea (DPRK) had declined to cooperate with him. Recalling the few positive elements that stood in contrast to the alarming human rights situation in the DPRK — the fact that the country was a party to four human rights treaties and that it had undertaken certain law reforms in recent years — he indicated that his analysis was centred around five themes: freedom from want, freedom from fear, freedom from discrimination, freedom from persecution, and freedom from exploitation.

35. The food shortages experienced by the DPRK since the mid-1990s had reached alarming proportions in 2009. As a result of the drop in food aid from the international community, in response to the nuclear and missile tests carried out by the DPRK, the World Food Programme had recently been able to feed only a third of those needing help. Furthermore, by prohibiting a number of commercial activities and re-establishing the system of distribution of rations, the authorities had also contributed to an aggravation of the food situation.

36. The authorities practised extensive surveillance over the country's inhabitants, encouraging them to inform on one another. In addition they had recourse to collective punishment, public executions and torture. Further, the authorities of the DPRK had been involved in the abduction of a number of foreign nationals, notably from Japan and from the Republic of Korea. In addition, key issues remained to be settled dating from the Korean War of 1950-1953, including matters of prisoners of war, family reunification and missing persons.

37. The very hierarchical system in the country was at the basis of the discrimination suffered by certain population groups, including women and children. In that connection, 2009 had been a key year, in which the DPRK had submitted to the Committee on the Rights of the Child its report on the implementation of the Convention on the Rights of the Child, which had, however, proved to be particularly thin in terms of special protection measures for children in various difficulties.

38. Forced displacements of the population, a consequence of repression and persecution, but also, for about the past 15 years, of the food crisis, was a problem. Those migrants were exposed on all sides to violations of their fundamental rights: in the destination countries, which did not treat them as refugees and refused them asylum, and in the DPRK where the sanctions imposed on them had become more severe. In addition, asylum seekers fell prey to smugglers and traffickers in persons and their families who had remained in the country were the target of sanctions as a collective deterrent measure.

39. The people were being exploited by the ruling class, which ensured the survival of the regime. The country did have resources, but they were used primarily for militarization rather than being used to improve the welfare of the population within the context of a people-first policy.

40. In conclusion, he reiterated the short- and long-term recommendations which he had made to the DPRK, in particular the need to put an end to discriminatory measures, to impunity, to public executions and to punishment of persons who had been sent back to the country after seeking asylum abroad; to ensure that the population could satisfy its basic needs; to cooperate effectively to resolve the problem of abductions of foreigners; to refocus public policies on the interests of the people; to modernize the existing system and to become a party to the major human rights treaties; to guarantee the security of persons and freedoms by eliminating the system of constant surveillance and informing, reforming the justice system and respecting international law; to participate actively in the forthcoming universal periodic review and to that end to request technical assistance from the Office of the United Nations High Commissioner for Human Rights; and to cooperate with the United Nations human rights mechanisms, in particular the Special Rapporteurs, in order to allow them to ascertain that their recommendations were being implemented and to enter the country.

41. He called on the international community to tackle all the aspects of the country's human rights record more comprehensively, through the totality of the United Nations system, and to use the DPRK's non-cooperation with his mandate as a key indicator for the universal periodic review which was planned for the end of the year.

42. **Mr. Pak** Tok Hun (Democratic People's Republic of Korea) said that his delegation had never recognized the resolution which had created the Special Rapporteur's mandate (E/CN.4/RES/2004/13) and that it categorically rejected his report (A/64/224) which it considered to be a document full of lies and devised by hostile forces. Up to 2003, when the Human Rights Commission resolution on the DPRK (E/CN.4/RES/2003/10) had been adopted by a group of Western countries, his country had participated in a range of cooperation activities in the field of human rights. The delegation demanded that the DPRK must be given equal treatment with other countries. Only if that principle were observed would the country continue to participate in the activities of the United Nations human rights bodies. It would refuse to submit to pressure from any country that would attempt to single it out for political reasons.

43. **Ms. Mirow** (Sweden), speaking on behalf of the European Union, asked how the Special Rapporteur would implement an integrated approach to ensure the protection of human rights in the DPRK and which areas should be given priority. She wondered whether there were any signs of engagement on the part of the Government to participate in the defence of human rights, which the international community could encourage and support, and, in the context of the universal periodic review, which the DPRK was ready to undergo, whether he could see any way to encourage the country to request technical assistance from the Office of the United Nations High Commissioner for Human Rights. She also asked whether there was any reason to think that the country's leadership was on the point of renouncing its military-first policy in order to favour the interests of the people, and what measures the Government should take to tackle the root causes of displacements, and what role the international community, in particular the Office of the United Nations High Commissioner for Refugees, and neighbouring countries, could play in guaranteeing observance of the principle of non-refoulement.

44. **Ms. Ellis** (Australia) said that her country was continuing to supply humanitarian assistance for the people of the DPRK through multilateral channels, without linkage to political considerations. Recalling that the Special Rapporteur had recommended that the international community should maximize dialogue with the Government of the DPRK to enlarge the space for human rights discourse and action, she asked him whether he had any ideas on specific actions in that regard.

45. **Mr. Okuda** (Japan) said that his country and the DPRK had held working consultations in August 2008 during which they had agreed on the purpose and procedures of the comprehensive investigation to be undertaken by the DPRK into cases of abduction. In November 2008, before the Third Committee, the DPRK had declared itself determined to conduct that investigation, but no action had been taken. In September 2009, at the meeting of the Human Rights Council in Geneva, it had claimed that the matter had been resolved, whereas in fact no progress had been made at all. Given that the mechanisms of the United Nations system were ready to assist the DPRK to improve its human rights situation, he asked what contribution the Special Rapporteur considered he could make if he was permitted to enter the country.

46. **Mr. Long** (United Kingdom of Great Britain and Northern Ireland) said that even if the DPRK had shown evidence of some progress in certain specific areas, for example the measures provided for people with disabilities, until it engaged with United Nations human rights mechanisms and allowed the Special Rapporteur access to the country, it would be difficult to verify information. He asked whether the Special Rapporteur had received any information, and, if so, what credence he attached to it and whether it indicated an improvement or deterioration in the situation. With regard to the human rights violations suffered by migrants returning to DPRK, he wished to know whether the Special Rapporteur had been able, since 2008, to engage with receiving States or with the Office of the United Nations High Commissioner for Refugees on that issue, to urge that DPRK emigrants who qualified for refugee status be treated in accordance with international law and the principle of non-refoulement applied. He asked what measures the DPRK should take as a matter of priority to reform its justice system and guarantee personal security and freedoms and how the international community could support such reforms.

47. **Ms. Plaisted** (United States of America) asked whether there were any signs that the authorities of the DPRK planned to modify the policies which had led to the food shortages in the country. She also asked for his views on the North Korean refugee situation and the content of any discussions held with countries of first asylum about the plight of those refugees. Human rights constituted a top priority for the United States, and addressing such issues would have a significant impact on the prospects for closer ties between the two countries.

48. **Mr. Pak** Tok Hun (Democratic People's Republic of Korea) speaking on a point of order, requested that the representative of the United States should use the official name of his country.

49. **Ms.** Chun **Hay-Ran** (Republic of Korea) stated that her Government hoped that the reunification of families separated by the frontier during the Korean War would be regularized and expanded. Recalling some recent positive developments in the DPRK, referred to by the Special Rapporteur, she asked for his appraisal of the impact of such developments on the improvement of the human rights situation in the country. She also asked whether the Special Rapporteur had any suggestions for effective ways to ensure that the universal periodic review planned for December 2009 would help to bring about substantial improvement in the quality of everyday life of the population.

50. **Mr. Michelsen** (Norway) called on the DPRK to permit the Special Rapporteur to enter the country. He urged him to continue to highlight the forced repatriation of North Korean nationals seeking asylum in neighbouring countries, because that practice was contrary to the international principle of non-refoulement. Norway shared the Special Rapporteur's view that the serious humanitarian situation in the Democratic People's Republic of Korea hampered the fulfilment of human rights and commended the Secretary-General for calling on the Government of the DPRK to address the critical humanitarian needs of the country's population. His country was looking forward to the universal periodic review the following December which would cover both Norway and the DPRK.

51. **Ms. Sunderland** (Canada) said that her delegation was troubled by reports of the decline of food availability and the related increase in child malnutrition and illness, and deplored the economic measures that had contributed to the situation. She asked the Special Rapporteur whether he had recently observed any improvement in food security in the DPRK and what course of action he recommended to the international community in order to maximize dialogue with the Government, as recommended in his report.

52. **Mr. Muntarbhorn** (Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea), replying to the representative of the DPRK, said that he had attempted throughout the six years that his mandate had been in existence to carry out his work in an independent and objective manner and he had always invited the DPRK to examine his draft reports and to comment on them. He deplored the lack of cooperation and the gravity of the human rights situation in the country, and remarked that it would be in the interests of the DPRK to promote respect for such rights.

53. He recalled that in his earlier report to the Human Rights Council he had envisaged the adoption of an integrated approach incorporating preventive strategies based on participation by the people and allied with protective measures and with the provision of assistance. However, such measures needed to be accompanied by greater liberalization, an improvement in food security and movement towards a people-first policy. The DPRK was a party to four international human rights treaties, and he urged it to implement the recommendations drawn up by the corresponding treaty bodies, which echoed the recommendations made by the United Nations system as a whole, and suggested that it should regard the universal periodic review as a further opportunity for effective promotion of a culture of protection of human rights. The DPRK had not requested any technical assistance from the Office of the United Nations High Commissioner for Human Rights, presumably because it rejected the resolutions that had been adopted concerning its human rights situation. He urged the authorities of the DPRK to promote a policy of equitable development, based on a culture of respect for human rights. With regard to displacement of people, the Government must put an end to persecutions and to mandatory exit visas and must stop punishing those who left the country without a visa or came back to it.

54. Responding to the question from the Australian delegation, he said that the United Nations system had means to exert pressure on the DPRK; for example, the Security Council had adopted resolutions to impose sanctions on it because of the nuclear issue. He concurred with the resolution that provision of humanitarian aid should not be affected.

55. Turning to the question of the Japanese delegation, he said that he would support the need for expeditious resolution of the abductions issue and remarked in that regard that the Pyongyang Declaration constituted a first step towards gradual normalization of relations between the two countries. If he was permitted to enter the DPRK, he would make efforts to promote concrete developments in terms of human rights implementation.

56. As to knowing whether improvements had been observed, of course it was encouraging that laws or amendments had been adopted, but the real question was the extent to which the international human rights standards were implemented. In addition, he recommended juvenile justice reform as the entry point for reform of the justice system as a whole. There was a need to promote the independence of the judiciary and to constrain the powers of the local administrations which acted without due process of law.

57. With regard to the food situation, he indicated that a production campaign had been launched but that it could not bear fruit because of a lack of fertilizer and because it was a forced initiative imposed by the army. There was still a need to enhance food security, however, based on people's participation and benefit-sharing. The World Food Programme should be enabled to provide assistance to some 6 million people, since at least a third of the population was suffering hunger. The report on the national census which was about to be published would give a more precise picture of the situation.

58. He expressed the wish to begin a dialogue with a view to promoting protection and humane treatment of all refugees and migrants, on the basis of respect for the principle of non-refoulement, and of the reunification of families, giving particular attention to war victims and to the handicapped, as well as to respect for the privacy of members of reunited families. He also regularly consulted the Office of the

United Nations High Commissioner for Refugees (UNHCR) with regard to asylum-seekers, and would intervene directly with the DPRK if he was informed of cases of refoulement. He urged the DPRK to participate fully in the universal periodic review process and to submit reports to the various agencies of the United Nations system and took the view that, in contradiction to the position expressed by the DPRK in its report, human rights were not a matter of national sovereignty but were universal in nature. The DPRK was not a poor country and national resources should be expended on the development of the population. Finally, he pointed out that he was ready to enter into dialogue on the various questions with the other human rights bodies and recommended the adoption of a global approach by the United Nations system as a whole.

59. **Mr. Falk** (Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967), presenting his report (A/64/328), deplored the lack of cooperation by Israel, which continued to deny him access to the occupied Palestinian territories and to refuse to cooperate with the fact-finding mission led by Judge Goldstone. In consequence, the report relied on information supplied by various independent organizations and actors within the United Nations system. The General Assembly or the Human Rights Council should request clarification of the legal consequences of that lack of cooperation, by referring the issue to the International Court of Justice for an advisory opinion.

60. The Goldstone report was of particular importance from the point of view of protection of human rights in occupied Gaza, and he challenged the United Nations to implement fully-documented findings on the commission of war crimes by Israel and Hamas during Operation Cast Lead. His own report contained proposals for measures to ensure accountability through the Security Council, the International Court of Justice, and through recourse to universal jurisdiction, and thereby to put an end to the Israel's impunity with respect to the administration of the occupied Palestinian territories. He suggested, furthermore, that the General Assembly should ensure that victims were compensated and should promote a legal discussion on the weapons and tactics used in the invasion of Gaza.

61. Although the ceasefire was more or less holding, the situation in Gaza had continued to deteriorate in a manner that disclosed grave breaches of the Fourth Geneva Convention and violations of international humanitarian law. The population lacked basic necessities, health conditions had further worsened and damaged buildings had not been repaired or rebuilt, since the entry of building material was prohibited by Israel. Several authoritative reports had also confirmed the allegations of war crimes, culminating in the Goldstone report. Civil society groups and certain governments had protested against perceived violations of international humanitarian law by Israel.

62. The fifth anniversary of the advisory opinion on the construction of a security wall by Israel called attention to several points: despite the opinion rendered by the International Court of Justice, construction of the wall was two thirds complete; Israel's defiance of the Court's ruling was a violation of its obligations as a Member of the United Nations and as a sovereign State; the failure of the United Nations system to implement the Court's decision was another indication that Palestinians' rights were not respected and that Israel enjoyed de facto impunity; and Israeli security forces had brutally repressed non-violent Palestinian demonstrations.

63. In addition, despite the calls for a settlement freeze by the General Assembly, President Obama and the Quartet, settlement expansion continued in East Jerusalem and Gaza, although it had been made clear that there would be no progress on the "road map" under those conditions. It had been widely assumed that the exercise of the Palestinians' inalienable right to self-determination would be brought about by bilateral negotiations, with the participation of the United States and the Quartet and the encouragement of the international community. However, because the exercise of that right had been so long deferred, finding a peaceful solution and ending Israeli occupation had become an urgent matter. Two negative elements bearing on the right to self-determination were the Israeli Government's refusal to endorse the international consensus on a Palestinian State comprising the West Bank and the Gaza Strip, with East Jerusalem as its capital, and the inability on the Palestinian side to achieve unified and legitimate representation and therefore to engage in meaningful negotiations.

64. On the other hand, the clear articulations that ending Israeli occupation and establishing a Palestinian State were important to advancing self-determination

and that Israeli-Arab peace and a Palestinian State were in the interest of the international community were two positive developments. Security Council resolution 1860 (2009) clearly called on the parties and the international community to renew their efforts to achieve a comprehensive peace based on two democratic States, Israel and Palestine, living side by side in peace, with secure and recognized borders.

65. Israel's occupation of Palestinian territories and recent military operations had revealed three gaps in international humanitarian law that deserved to be noted. First, the civilian population in Gaza had been denied the right to depart from the combat zone, although it was the occupier's duty to protect civilians, as described in Additional Protocol I to the Geneva Conventions. Second, blocking reconstruction aid could be treated as prohibited collective punishment. As international humanitarian law did not explicitly address that problem, it could be handled by the adoption of a further protocol to the Geneva Conventions. Third, the dislocation of families as a result of the prolonged occupation of the occupied Palestinian Territory, coupled with the restrictions on mobility imposed by the occupying power, was an unacceptable practice from an international human rights perspective.

66. **Mr. Mansour** (Observer for Palestine) thanked the Special Rapporteur for his report and presentation. He was pleased that those matters were being addressed, as they were of great importance not only to the Palestinian people, but also to all States that had regard for the rule of law. He endorsed the resolution recently adopted by the Human Rights Council, which condemned Israel's policy of obstruction. By preventing those who had violated international law from being held accountable for their actions, Israel was perpetuating a culture of impunity. He called on Member States to do everything possible to implement the recommendations in the report and ensure justice for the Palestinian people, who had endured such terrible suffering as a result of Israel's policy of aggression, particularly in Gaza. He highlighted States' responsibility to put an end to the impunity enjoyed by Israel and to bring the criminals to justice.

67. **Ms. Plaisted** (United States of America) said that since taking office, President Obama had been strongly committed to comprehensive peace in the Middle East and to the existence of two States, Israel and Palestine, living side by side, in peace and security. The United States of America remained fully dedicated to the prompt resumption of meaningful negotiations in pursuit of those goals. Her delegation had frequently urged the United Nations to demonstrate balance and objectivity and to work constructively on the situation in Israel and the Palestinian territories and regretted that the Special Rapporteur had focused only on Israel's violations of international law. She noted that the Special Rapporteur's report documented serious violations of international humanitarian law and human rights law in Gaza by Hamas as well as Israel. Her delegation took those allegations very seriously, as the United States was committed to the universal application of international law, including humanitarian law and human rights law, and expected the same of the two parties. However, a moral equivalence should not be drawn between Israel, a democratic State with a right to self-defence, and Hamas, a terrorist group that had responded to Israel's withdrawal from Gaza by terrorizing civilian populations in southern Israel. Israel had the institutions and necessary means to adequately investigate the accusations levelled against it, and it had been doing so. Her delegation encouraged Israel to investigate all of the credible allegations of misconduct and violations of international law and to punish those responsible. Her Government also demanded that the Palestinian Authority conduct its own investigations of the violations of international law committed by Hamas, a terrorist group which had taken Gaza from the Palestinian Authority's legitimate Government by force and which could not and would not examine its own violations. President Obama had made it clear that he rejected the legitimacy of Israel's settlement expansion. Her delegation was troubled by the recommendations and suggestions in the Special Rapporteur's report that the General Assembly or the Human Rights Council request an advisory opinion from the International Court of Justice on the legal consequences of Israel's non-cooperation with the United Nations and its representatives. The statements and conclusions on international law matters contained in the report and its suggestion that the General Assembly should establish an international criminal tribunal did not contribute either to the principle of accountability or to the protection of the human rights of all parties to the conflict. Her delegation urged all Member States of the United Nations to contribute to the larger, essential goal of establishing just and lasting peace in the Middle East.

68. **Mr. Mamdouhi** (Islamic Republic of Iran) thanked the Special Rapporteur for his comprehensive and informative report on the serious human rights violations in the occupied Palestinian territories. Although the report covered some cases of systematic human rights violations, including the continuing blockade, the war crimes committed during "Operation Cast Lead" and the establishment of illegal settlements, many other violations committed by the occupying power had not been mentioned. The report examined the issue of the occupying Power's accountability for the atrocities committed against the Palestinian people for over 60 years; Operation Cast Lead should not be considered an isolated case. The recent Gaza War had plunged 1.5 million people into a state of despair. Excessive and indiscriminate use of force had killed and wounded thousands of Palestinian civilians, including women and children. The War had also resulted in extrajudicial executions and the destruction of homes, property, infrastructure and agricultural land. His delegation was surprised that despite the broad consensus reached regarding the various means of redressing war crimes committed by an occupying regime, the report did not include any recommendations on employing a competent mechanism to examine the accountability of the perpetrators of those crimes.

69. **Ms. Mawe** (Sweden), speaking on behalf of the European Union, said that the European Union was gravely concerned about the deteriorating humanitarian and human rights situation in the occupied Palestinian territories. She urged the two parties to strictly observe international humanitarian law and human rights law. They had a responsibility to prevent, investigate and remedy violations. The European Union regretted that the Special Rapporteur had not been able to visit Israel or the occupied Palestinian territories and called on all States to cooperate and allow him free access to their territory. She asked the Special Rapporteur what practical measures the United Nations system could take, in cooperation with the Israeli and Palestinian parties, to improve the humanitarian and human rights situation.

70. **Ms. Gendi** (Egypt), concurring with the representative of Sweden, also asked what the United Nations system could do to improve the situation in the occupied Palestinian territories and to contribute to the full implementation of resolutions that had been adopted but that, to date, existed only on paper. Her delegation also wondered what the international community could do to prevent any form of selectivity when determining priorities for resolving diverse conflicts.

71. **Mr. Mohamed** (Maldives) welcomed the comprehensive scope of the Special Rapporteur's report. His delegation expressed regret that Israel, the occupying Power, had refused to cooperate with the Special Rapporteur in preparing the report. Given the Maldives' firm commitment to the principles enshrined in the Charter of the United Nations, his delegation was shocked by the continued suffering of the Palestinian people due to the denial of their most basic rights: the right to self-determination and the right to live in peace and security in their own State and homeland. His delegation also supported the Israeli people's right to live in peace and security beside a sovereign and independent Palestinian State. In the interest of justice, accountability for the violations of human rights law and humanitarian law in Gaza must be pursued. He asked the Special Rapporteur to provide details on the role international organizations could play in ensuring respect for international law, considering the gaps in international humanitarian law that enabled the culture of impunity and the continued suffering of people in the occupied Palestinian territories. He also asked what the Special Rapporteur was doing to address the situation of Palestinian women and children, who were enduring challenges and hardships that were particularly troublesome.

72. **Ms. Halabi** (Syrian Arab Republic) recognized the Special Rapporteur's courage at a time when human rights issues were subject to double standards and selectivity. His report, as well as the Goldstone report, underscored the international community's unwillingness to make Israel respect its commitments and adhere to international law. That was a worrisome situation, in that it resulted in impunity, as the Special Rapporteur had pointed out frankly. Some of the States that positioned themselves as ardent defenders of human rights and demanded that commitments be respected, for example in the case of Myanmar or the Democratic People's Republic of Korea, showed a disregard for human rights violations in the occupied territories. For that reason, her delegation wished to reiterate its thanks to the Special Rapporteur for his recommendations, and wondered if those recommendations could be employed to find the just and lasting solution to the question of Palestine that the international community called for.

73. **Mr. Falk** (Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967) said that it was important to note that the three special rapporteurs who had made presentations during the meeting faced the same problem of non-cooperation from the countries under their human rights mandate. The General Assembly and the United Nations system had a responsibility to take that refusal to cooperate very seriously and respond in a non-discriminatory manner. The question should not be one of politics, but rather of principles, and Israel should face the same criticism and censure for its non-cooperation as the Democratic People's Republic of Korea or Myanmar. In the interest of peace and human rights, such dialogue and unrestricted investigations into human rights questions should be facilitated. All of the special rapporteurs endeavoured to carry out their role in the most objective and impartial way possible, with concern for accuracy and truth in their communication with Governments and their representatives. He called attention to the opening remarks by the Observer for Palestine, in which he had implicitly been asking why, after 42 years of occupation, nothing had been done to stop a Member State from violating the rights, under international humanitarian law, of an entire people. As the Observer for Palestine had noted, it was a matter of both bringing justice to the victims of violations and ending the impunity of the State committing those violations.

74. In response to the remarks made by the delegation of the United States, he said that while it was all well and good to speak abstractly about a commitment to peace, nothing concrete had been done in the course of 42 years to bring the occupation in line with international humanitarian law. In the context of its very important role in the conflict, the Government of the United States did not seek to fulfil the principle of accountability; it was non-compliance with that principle that had led to the hardship and suffering endured by the Palestinian people. Requesting the International Court of Justice to demand Member States' cooperation with representatives of the United Nations was a constructive measure. He wondered how his mandate, which required access to the occupied territories, could be effective while Israel continued to deny him entry.

75. He welcomed the Islamic Republic of Iran's interest in the long history of the occupation. Two types of consistent violations by the occupier, which entailed the Special Rapporteur's responsibility, had characterized the occupation: excessive use of force and various forms of collective punishment. It was the time for the international community to become seriously engaged in the situation. He welcomed the European Union's call on all parties to cooperate with representatives of the United Nations. In response to the representatives of Sweden and Egypt, he said that the first practical measure to implement at the current stage would be to take the recommendations in the Goldstone report seriously. Ignoring those recommendations would be tantamount to declaring that international criminal law was important only when it coincided with the geopolitical priorities of dominant countries. That was certainly not the message to send if there was to be faith in the rule of law above the rule of the strongest. That was a very significant issue. The unprecedented prolonged occupation — an occupation of 42 years — characterized by systematic violations was a situation that deserved greater interest. He wondered what threats such a situation posed to international peace and security.

76. He thanked the representatives of the Syrian Arab Republic and Maldives, in particular for highlighting the lack of protection for women and children during the Gaza operation, an exceptional situation in the history of modern war. Not enough attention had been paid, furthermore, to the trauma suffered by nearly 90 per cent of children in Gaza, who made up nearly 53 per cent of the population.

77. In conclusion, he emphasized the need to implement concretely and take seriously the recommendations in his report and the Goldstone report and thus vindicate the role of the United Nations.

The meeting rose at 12.55 p.m.